THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

RSA No.38 of 2002

1. **Smt. Kalpana De,**
   W/o. Late Birendra Lal Dey;
2. **Smti Swapna De (Sarkar),**
   D/o Late Birendra Lal Dey;
3. **Sri Ashish Kanti De;**
4. **Shri Asit Baran De;**
5. **Shri Subhash De;**
6. **Shri Debraj De;**

   All are legal heirs of Late Birendra Lal Dey
   and all are residents of Sabroom,
   P.S. Sabroom, District – South Tripura.

..... ***Plaintiff-Appellants.***

–Versus–

1. **The State of Tripura,**
   Represented by the Secretary to the
   Government of Tripura,
   Revenue Department, Agartala.
2. **The District Magistrate & Collector,**
   Udaipur, South Tripura.
3. **The Estate Officer (S.D.O)**
   Sabroom, South Tripura.
4. **Member, Tripura Sales Tax Tribunal,**
   Agartala (As the Appellate Authority
   Under Section 93 of the Tripura Land Revenue
   & Land Reforms) Act, 1960.
5. **Shri Kamala Bahadur,**
   S/o Late Bong Bahadur,
   Village Gurkha Basti, Agartala,
   P.S. East Agartala, District West Tripura.

..... ***Defendant- Respondents.***

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. A K. Bhowmik, Sr. Advocate,
Mr. R Datta, Advocate.

For the respondents : Mr. D Chakraborty, Advocate.

Date of hearing : 08.07.2013.

Date of pronouncement of judgment. :

Whether fit for reporting: **Yes/No.**

JUDGMENT & ORDER

This regular second appeal by the original plaintiffs is directed against the judgment & decree, dated 03.05.2002, passed by the learned Additional District Judge, South Tripura, Udaipur in Title Appeal No.1 of 1998 whereby he dismissed the appeal of the plaintiffs.

2. Briefly stated the facts of the case are that the appellant Birendra Lal Dey(hereinafter referred to as plaintiff) filed a suit praying that he is in possession of the suit land comprised in CS Plot Nos.1107 and 1108 recorded in Khatian No.343 of Mouja – Sabroom. According to the plaintiff this land formed part of the old Jote No.72.

3. It is not disputed that one Bong Bahadur was the original owner of land measuring 10 Kanis, 6 and ½ Gandas of old Jute No.72 which he purchased from the Government in 1937. After the death of Bong Bahadur his wife Debalaxmi Devi inherited the property. According to the plaintiff the '*Jalepha Udbastu Sarbartha Sadhak Samity Ltd*' entered into possession of the suit land on the basis of some oral licence granted by Debalaxmi Devi. Thereafter, the said Samity raised

construction on the suit land and started a soap factory and a furniture factory there upon. On 19.03.1971 the '*Samity*' transferred its right and possession in favour of the plaintiff under a registered deed of relinquishment and since then the plaintiff is in possession of the suit land.

4. During the survey settlement operation the suit land was recorded as khas land in favour of the Government of Tripura. The plaintiff thereafter filed objections under Section 11(3) of the Tripura Land Revenue and Land Reforms Act, 1960(for short TLR & LR Act). These objections were rejected. The appeal filed by the plaintiff against the order of the Collector was also dismissed. Thereafter, the Sub Divisional Officer, Sabroom started proceedings for eviction of the plaintiff from the suit land as per the provisions of the Tripura Public Premises (Eviction of Unauthorized Occupants) Act, 1982 and an order of eviction was passed against the plaintiff in May, 1984. The plaintiff preferred an appeal which was also dismissed. The writ filed by the plaintiff was allowed and it was directed that the appeal should be heard and decided after hearing both the parties. The appellate authority stayed the orders of eviction. Subsequently, this appeal was also rejected on 11.03.1991. It is then that the plaintiff filed the present suit claiming his right, title and possession of the suit land.

5. The State resisted the suit by filing a written statement and according to the State of Tripura, the land in question never formed part of Jote No.72. According to the State, originally Surendra Das was

the owner of Jote No.33 measuring 10 Kanis 6 and ½ Gandas. This Surendra Das could not pay the land revenue and was declared a defaulter and then the land under Jote No.33 was put to auction and Bong Bahadur purchased the land and Jote No.72 was posted for this land. Later on, Bong Bahadur sold .60 acres of land to Nibaran Gan Choudhury for which Jote No.184 was created. 15 Gandas of land out of Jote No.72 was required by the Government for the purpose of construction of Sabroom–Agartala road. According to the State, after taking out this land the remaining land left with Debalaxmi was 8 Kanis and 15 Gandas which has been rightly reflected in the last settlement operation.

Therefore, basically 2(two) issues arise for decision :-

(i) Whether the plaintiff has any title to the suit land?

and

(ii) Whether he was entitled to any relief against the State Government?

6. It is not disputed that during the pendency of the suit a Survey Commissioner was appointed for local investigation to ascertain whether the land in question formed part of original survey No.72 or not. The surveyor came to the conclusion that the 2(two) plots of land in the possession of the plaintiff were originally part of Jote No.72. This report was however rejected by both the Courts below.

7. Sri A K Bhowmik, learned senior counsel, appearing for the plaintiff, submitted that both the Courts below gravely erred in rejecting the report of the surveyor. On the other hand, Sri D

Chakraborty, learned counsel, submitted that even if it be presumed that the report of the surveyor is right the plaintiff has no right or title in the suit land and, therefore, he is not entitled to file or maintain the present suit. Sri Bhowmik countered this argument by urging that since the plaintiff is in possession of the suit land he has a right to protect his possession except against the true owner.

8. I do not intend to deal with any other issue since the case can be decided only on the point whether the suit is maintainable on behalf of the plaintiff or not. Admittedly, the heirs of Bong Bahadur were parties to the suit. They did not claim any title in the suit land for themselves. From the averments made in the plaint itself, according to the plaintiff, the original owner was Bong Bahadur. After his death his heirs inherited the suit land. Debalaxmi was the wife of Bong Bahadur. It is alleged that Debalaxmi by an oral licence transferred the possession of the land to *'Jalepha Udbastu Sarbartha Sadhak Samity Ltd.'* No sale deed or licence deed has been placed on record. It has not been averred that the value of the property was less than Rs.100/- There could be no transfer of the right, title or interest in such land without execution of a registered deed. Therefore, I have no doubt in my mind that *'Jalepha Udbastu Sarbartha Sadhak Samity Ltd,'* even if it was in possession of the suit land, had no right to transfer the land in favour of the plaintiff. Therefore, the very foundation of the title of the plaintiff is demolished. When *'Jalepha Udbastu Sarbartha Sadhak Samity Ltd'* had no title in the suit land how could it transfer its right in

favour of the plaintiff? The answer to this question has to be that *'Jalepha Udbastu Sarbartha Sadhak Samity Ltd'* could not transfer any right, title or interest to the plaintiff.

9. Assuming for the sake of argument that *'Jalepha Udbastu Sarbartha Sadhak Samity Ltd.'* had some right, title or interest one fails to understand how this right could be transferred by means of a relinquishment deed. A deed of relinquishment can be executed by one person in favour of the other whereby one person relinquishes his right or title in a part or portion of the property to another person but such person must already have some right title or interest in the property. In the present case *'Jalepha Udbastu Sarbartha Sadhak Samity Ltd.'* had no right in the suit land and, therefore, no title passed in favour of the plaintiff and the plaintiff is not the owner nor does he have any right title or interest in the suit.

10. Sri Bhowmik, learned senior counsel then contended that the plaintiff has a right to protect his possession against all but the true owner. He further submits that the true owner i.e. the heirs of Bong Bahadur have not filed any proceedings for his eviction. He also submits that the State is not the true owner and, therefore, cannot maintain the proceedings. This argument is without any force. In settlement proceedings the land was entered in favour of the State Government and in the revenue record the State Government is shown as owner of the land. The heirs of Bong Bahadur took no steps to challenge the order whereby the land was vested in the State Government. It is only

the Bong Bahadur who could have challenged the order passed in settlement proceedings. The plaintiff being stranger had no such right. The plaintiff had no right to challenge the order but filed objections under TLR & LR Act which were rejected. The State did not dispossess the plaintiff without following the due process of law but initiated proceedings under the Tripura Public Premises (Eviction of Unauthorized Occupant) Act, 1982.

11. Presumption of truth is attached to revenue entries and the presumption of ownership in favour of the State has not been rebutted. Since the plaintiff has no right or title in the suit land he cannot protect his possession against the State which is recorded to be owner of the suit land. The plaintiff has no right to urge that it is not the State but somebody else who is the owner. It is only the heirs of Bong Bahadur who could have filed a proceeding against the State that the land was wrongly entered in the name of the State. They have chosen to remain silent and since the plaintiff has no right or title in the suit land he cannot be permitted to challenge the correctness of the order whereby the land was entered in favour of the State Government. The plaintiff being a trespasser on the suit land has no right to challenge the correctness of the order whereby the suit land was entered in favour of the State.

12. In view of the discussion, I am clearly of the view that the plaintiff had no right to maintain the suit. Therefore, the appeal is dismissed with no order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE